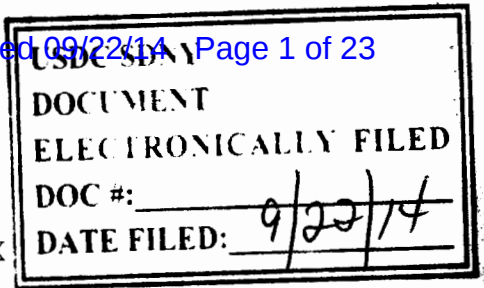


ORIGINAL



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOHN ASSADI,

Plaintiff,

12 Civ. 1111 (LLS)

- against -

OPINION & ORDER

UNITED STATES DEPARTMENT OF STATE,

Defendant.  
-----X

Plaintiff John Assadi brings this Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, suit to obtain records from Defendant the United States Department of State ("DOS").

DOS moves for partial summary judgment, arguing that it has satisfied its obligations under FOIA because its search through February 2014 was adequate and any withheld documents fall within FOIA exemptions. Assadi contends that DOS's search was inadequate, DOS erroneously withheld documents under FOIA Exemptions 3 and 5, and DOS did not reasonably segregate the non-exempt portions. He also requests in camera review of all disputed documents.

The motion for partial summary judgment is granted because DOS conducted an adequate search, provided sufficiently detailed affidavits and Vaughn indices<sup>1</sup> that show it properly invoked

---

<sup>1</sup> "A Vaughn index is an itemized listing of the non-disclosed records, describing each record and portion withheld, and providing a detailed justification for the agency's withholding,

applicable FOIA exemptions, and released all reasonably segregable non-exempt portions of the documents.

### **BACKGROUND**

On November 29, 2011, Assadi, a partner in the law firm of Assadi & Milstein LLP, Compl. ¶ 4, submitted a FOIA request to DOS's Office of Information Programs and Services ("IPS").<sup>2</sup> Id. Ex. C at 1.

Assadi requested that IPS

search the records of the U.S. Department of State, including the National Visa Center, Fraud Prevention Unit, the American Embassies/Consulates in Ankara, Istanbul and Adana, Turkey, the American Embassy in Paris, France and the American Embassy in Abu Dhabi, United Arab Emirates, and provide any and all documents, including operational and administrative policies, intra-agency and inter-agency memoranda, letters, cables, emails, personal correspondence or other communications relating to John Assadi, John J. Assadi or Assadi & Milstein LLP.

Id.

Assadi explained:

The circumstance that led to the creation of such records and the basis for my belief that such records exist within the Department of State and its offices relate to an unclassified memorandum issued by the State Department NVC Fraud Prevention Unit on February 19, 2010 to the American Embassy/Consulate, in Ankara, Turkey, among others, and subsequent anomalous treatment by State Department entities

---

specifying the FOIA exemption that it has applied." Nat'l Day Laborer Org. Network v. U.S. Immigration & Customs Enforcement Agency, 811 F. Supp. 2d 713, 733 (S.D.N.Y. 2011) (footnote omitted).

<sup>2</sup> Assadi had previously submitted a FOIA request to DOS on October 11, 2011, Compl. Ex. A, but DOS denied this request because Assadi did not provide proof of his identity. Id. Ex. B at 1.

of visa applications for applicants represented by John Assadi or Assadi & Milstein LLP.

Id.

Assadi filed the Complaint on February 14, 2012, alleging that DOS "failed to produce any records responsive to Plaintiff's November 29, 2011 FOIA request or demonstrate that responsive records are exempt from production, nor has Defendant indicated when or whether any responsive records will be produced." Id. ¶ 10. He asked that the Court "Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's November 29, 2011 FOIA request and a Vaughn index of any responsive records withheld under claim of exemption." Id. at 4.

Pursuant to consultations between the parties and conferences held by the Court on May 11, 2012, August 17, 2012, September 14, 2012, and November 15, 2013, see Dkt., the parties agreed to a two-phase search and rolling productions of responsive records.

The first search phase produced records from the Central Foreign Policy Records, the Bureau of Consular Affairs, the U.S. Embassies in Ankara, Turkey, Paris, France, and Abu Dhabi, United Arab Emirates, see Walter Decl. ¶¶ 9-14, and the second search phase produced records from the National Visa Center. See id. ¶¶ 15-19. DOS produced a Vaughn index to Assadi for the

first phase in September 2012 and for the second phase in March 2014 with this motion.

DOS has since undertaken a third search phase of the Office of the Legal Adviser and the Office of Legal Affairs in the Office of Visa Services within the Bureau of Consular Affairs, which is not at issue on this motion. Id. ¶ 23.

### **DISCUSSION**

DOS moves for partial summary judgment, arguing that it has met its FOIA obligations for the first two search phases.

Assadi argues that DOS failed to conduct an adequate search, improperly withheld documents under FOIA Exemptions 3 and 5 and did not release all reasonably segregable factual material. Assadi also requests that the Court conduct an in camera review of all disputed documents.

#### **A. FOIA Summary Judgment Standards**

FOIA requests are generally resolved on summary judgment:

In order to prevail on a motion for summary judgment in a FOIA case, the defending agency has the burden of showing that its search was adequate and that any withheld documents fall within an exemption to the FOIA. See 5 U.S.C. § 552(a)(4)(B); EPA v. Mink, 410 U.S. 73, 79, 93 S.Ct. 827, 832, 35 L.Ed.2d 119 (1973). Affidavits or declarations supplying facts indicating that the agency has conducted a thorough search and giving reasonably detailed explanations why any withheld documents fall within an exemption are sufficient to sustain the agency's burden. See Maynard v. CIA, 986 F.2d 547, 560 (1st Cir. 1993); Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) (per curiam); Malizia v. United States Dep't of Justice, 519 F. Supp. 338, 342 (S.D.N.Y. 1981). Affidavits submitted by an agency are "accorded a presumption of good faith," Safecard

Servs., Inc. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991); accordingly, discovery relating to the agency's search and the exemptions it claims for withholding records generally is unnecessary if the agency's submissions are adequate on their face. When this is the case, the district court may "forgo discovery and award summary judgment on the basis of affidavits." Goland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978), cert. denied, 445 U.S. 927, 100 S.Ct. 1312, 63 L.Ed.2d 759 (1980); accord Maynard, 986 F.2d at 556 n. 8; Simmons v. United States Dep't of Justice, 796 F.2d 709, 711-12 (4th Cir. 1986).

In order to justify discovery once the agency has satisfied its burden, the plaintiff must make a showing of bad faith on the part of the agency sufficient to impugn the agency's affidavits or declarations, Goland, 607 F.2d at 355, or provide some tangible evidence that an exemption claimed by the agency should not apply or summary judgment is otherwise inappropriate, see, e.g., Washington Post Co. v. United States Dep't of State, 840 F.2d 26, 28 (D.C. Cir. 1988) (non-moving party produced hard evidence in the form of books and press accounts suggesting privacy exemption did not apply, vacated on other grounds, 898 F.2d 793 (1990); Porter v. United States Dep't of Justice, 717 F.2d 787, 791-93 (3d Cir. 1983) (agency's affidavits included conflicting information); Schaffer v. Kissinger, 505 F.2d 389, 390-91 (D.C. Cir. 1974) (per curiam) (inadequate reasons stated for application of national security exemption).

Carney v. U.S. Dep't of Justice, 19 F.3d 807, 812-13 (2d Cir. 1994) (footnote omitted).

In addition to affidavits or declarations, agencies often submit Vaughn indices to meet their burden. Nat'l Day Laborer Org. Network, 811 F. Supp. 2d at 733. "The Vaughn index must adequately describe each withheld document or portion of a document and must state the claimed exemption with sufficient specificity to permit a reasoned judgment as to whether the material is actually exempt under FOIA." NAACP Legal Def. &



Educ. Fund, Inc. v. U.S. Dep't of Hous. & Urban Dev., No. 07 Civ. 3378, 2007 WL 4233008, at \*9 (S.D.N.Y. Nov. 30, 2007) (internal quotation marks and citation omitted).

**B. Adequacy of the Search**

"A search will be considered adequate if it was reasonably calculated to uncover all relevant documents. Reasonableness does not demand perfection, and a reasonable search need not uncover every document extant." Bloomberg L.P. v. Bd. of Governors of Fed. Reserve Sys., 649 F. Supp. 2d 262, 271 (S.D.N.Y. 2009), aff'd, 601 F.3d 143 (2d Cir. 2010).

DOS relies on the declaration of Sheryl L. Walter, Director of IPS, to show that its search was adequate. DOS summarizes the search as follows:

First, the Department initiated searches of all Department components specifically requested by the Plaintiff, including several embassies and consulates. See Walter Decl. ¶¶ 22, 27-34. The Department located responsive records as a result of these searches, the details of which are described in the Walter Declaration. See Walter Decl. ¶¶ 8-14, 27-34; Exh. 5-11. Additionally, the Department searched its Central Foreign Policy Records collection (the "Central File"), which contains over 30 million records of a substantive nature. See Walter Decl. ¶¶ 8, 24-26; Exh. 5. A search of the Central File was conducted through a full-text search using the terms "John Assadi," "John J. Assadi," "Assadi, John," "Assadi Milstein" and "Assadi and Milstein." Two responsive records were found. See Walter Decl. ¶¶ 14, 35-38; Exh. 11. Given the nature of the requested records, a Consular Affairs Analyst determined that the only locations reasonably likely to contain responsive records in the Bureau of Consular Affairs were two databases, the Consular Lookout and Support System and the Petition Information Management Services; both of these databases were searched using the term "John Assadi."

Walter Decl. ¶¶ 35-38. Some responsive records were located. Walter Decl. ¶¶ 14, 38; Exh. 11. Finally, the Fraud Prevention Unit of the National Visa Center conducted a search of its paper and electronic records systems using the terms "Assadi," "John Assadi," "John J. Assadi," "Assadi and Milstein," and "Assadi or Milstein." Responsive records were also found through this search. See Walter Decl. ¶¶ 15-19, 39-41; Exh. 12-16.

Defendant's Memorandum of Law in Support of the Motion for Partial Summary Judgment dated March 6, 2014 ("D. Mem.") 7-8.

The Walter Declaration is sufficiently detailed and shows that DOS searched all sources specified in Assadi's request as well as other DOS records systems likely to contain relevant documents, and that its search methods were reasonably calculated to uncover all responsive records.

Assadi argues that DOS's "failure to search the Office of the Legal Adviser and the Office of Legal Affairs in the Office of Visa Services calls into question the adequacy of Defendant's searches from the outset of the instant FOIA process." P. Opp. at 5. He contends that his FOIA request asked for documents relating to Assadi & Milstein LLP and "Because law firms engage in litigation frequently by their nature, Defendant should have reasonably considered there would be responsive records within the Office of Legal Affairs in the Office of Visa Services." Id. at 5-6.

However, Assadi's FOIA request was stated to be based on his belief that DOS had records relating to the February 2010

memorandum issued by the State Department NVC Fraud Prevention Unit and subsequent anomalous treatment of visa applications for applicants represented by Assadi & Milstein LLP. Compl. Ex. C at 1. It was reasonable for DOS to interpret Assadi's request as seeking records pertaining to the February 2010 memorandum and the processing of visa applications involving Assadi and his firm. DOS later asked for clarification from Assadi about the request's scope, and when Assadi said that his request included litigation files in cases brought by Assadi & Milstein LLP, DOS undertook supplemental searches of its legal offices. Walter Decl. ¶ 23. The evidence shows neither bad faith on the part of DOS sufficient to impugn the Walter Declaration, nor that the search so far conducted was inadequate.

### **C. Validity of Claimed FOIA Exemptions**

FOIA provides:

- (a) Each agency shall make available to the public information as follows: . . . [exhaustive provisions of scope and operation of the Act]
- (b) This section does not apply to matters that are-
  - (1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
  - (2) related solely to the internal personnel rules and practices of an agency;
  - (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in



such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion

of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

5 U.S.C. § 552(a)-(b).

DOS has withheld documents in whole or in part on the basis of Exemptions 3, 5, 6 and 7(E).

Assadi does not contest DOS's withholdings of documents under Exemption 5 for attorney-client privilege and attorney work product, portions of documents under Exemption 6, or one document under Exemption 7. Accordingly, the Court need only address Assadi's challenges to DOS's withholdings under Exemption 3 and Exemption 5's "deliberative process" privilege, recognized by courts as "a sub-species of work-product privilege that covers documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated," Tigue v. U.S. Dep't of Justice, 312 F.3d 70, 76 (2d Cir. 2002) (internal quotation marks and citation omitted), and issues of segregation and in camera review.

### **1. Exemption 3: Statutory Exemptions**

Assadi argues that Exemption 3 does not apply to the documents withheld under it.

Exemption 3 permits withholding for matters

specifically exempted from disclosure by statute (other than section 552(b) of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld

5 U.S.C. § 552(b)(3). "To properly withhold documents under this exemption, the Government must establish both that the statute invoked qualifies under Exemption 3 and that the documents withheld qualify for nondisclosure under that statute." Adamowicz v. I.R.S., 552 F. Supp. 2d 355, 366 (S.D.N.Y. 2008), aff'd, 402 F. App'x 648 (2d Cir. 2010) (citation omitted).

The Immigration and Nationality Act, 8 U.S.C. § 1202(f), provides in part: "The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential."

Assadi does not contest that § 1202(f) qualifies as a withholding statute. See, e.g., Immigration Justice Clinic of Benjamin N. Cardozo School of Law v. U.S. Dep't of State, 12 Civ. 1874, 2012 WL 5177410, at \*1 (S.D.N.Y. Oct. 18, 2012) (citing cases holding that § 1202(f) is a withholding statute).

The documents withheld by DOS qualify for nondisclosure under § 1202(f). The Vaughn entries for the documents withheld

pursuant to Exemption 3 describe intra- or inter-agency e-mail chains, memoranda, and visa case lists or reports. See Walter Decl. Ex. 1, Vaughn entries 1-35, 37-46, 48-61, 63-84. The entries make clear that the withheld documents relate to visa applications or litigation involving visa adjudications, and therefore pertain to the issuance or refusal of visas or permits to enter the United States and are confidential under § 1202(f). See, e.g., Vaughn entry 2 ("The withheld information contains a discussion between Department officials regarding a specific visa applicant, represented by John Assadi and/or Assadi & Milstein LLP, and the next steps the Department is considering before taking action on this particular individual's visa application. The discussion itself pertains directly to issuance or refusal of a visa to enter the United States and, therefore, is withheld under FOIA exemption b3."); Vaughn entry 3 ("This document is an e-mail chain that includes communications between Consular Officials, DOS counsel, and DOJ counsel pertaining to litigation in the Southern District of New York (SDNY) involving visa adjudications. The withheld information contains a discussion between Department officials regarding a specific visa applicant, represented by John Assadi and/or Assadi & Milstein LLP, and potential next steps available to the Department before rendering a decision on this particular individual's visa application. The discussion itself pertains

directly to the issuance or refusal of a visa to enter the United States and, therefore, is withheld under FOIA exemption b3."); Vaughn entry 4 ("This document is an e-mail chain that includes communications between Consular Officials and DOS counsel seeking and/or receiving legal advice regarding the standards and processes pertaining to the adjudication of visas. The withheld information contains a discussion between Department officials regarding several visa applicants, represented by John Assadi and/or Assadi & Milstein LLP, and the next steps the Department is considering before taking action on these particular visa applications. The discussion itself pertains directly to the issuance or refusal of a visa to enter the United States and, therefore, is withheld under FOIA exemption b3.").

Assadi contends that § 1202(f) should only be applied to past and present visa applications, citing this Court's decision in Immigration Justice Clinic, 2012 WL 5177410, at \*3, which held that "where there is no visa application process to determine the issuance or refusal of a visa, the Government cannot rely on § 1202(f) to withhold information that was neither gathered, used, nor is being used to determine an actual past or pending visa application." Assadi argues that DOS "has withheld numerous documents under FOIA exemption 3 that refer to



decisions on future visa applications that do not currently exist." P. Opp. at 10.

DOS has submitted the declaration of Jeffrey E. Gorsky, Chief of the Advisory Opinion Division of the Visa Office in DOS's Bureau of Consular Affairs, with its reply brief. Gorsky declares, without rebuttal:

I further confirm that all of the information withheld under Exemption 3 pursuant to section 222(f) of the INA pertains to the issuance or refusal or actual visas that were sought for entry into the United States. These records were generated based on the concerns noted above relating to visa eligibility in certain cases adjudicated by consular officers, and many of them were generated in the context of ongoing or anticipated litigation involving these visa petitions and Mr. Assadi.

Gorsky Decl. ¶ 8.

The withheld documents are exempt from disclosure under Exemption 3.

## **2. Exemption 5: Deliberative Process Privilege**

Assadi contends that it is unclear whether DOS has satisfied the elements of the deliberative process privilege because the Vaughn indices "provided overly vague descriptions of the withheld documents and the information therein" and the Walter Declaration "contained no specific reasoning as to how FOIA exemption 5 applied to the withheld documents at issue." P. Opp. at 13.

FOIA provides, "Each agency shall make available to the public information," 5 U.S.C. § 552(a), but "This section does

not apply to matters" such as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Id. § 552(b)(5). This deliberative process privilege protects "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." Tigue, 312 F.3d at 80 (internal quotation marks and citation omitted).

The Second Circuit has elaborated:

An inter- or intra-agency document may be withheld pursuant to the deliberative process privilege if it is: (1) predecisional," i.e., "prepared in order to assist an agency decisionmaker in arriving at his decision," and (2) "deliberative," i.e., "actually . . . related to the process by which policies are formulated."

Nat'l Council of La Raza v. Dep't of Justice, 411 F.3d 350, 356 (2d Cir. 2005), quoting Grand Cent. P'ship, Inc. v. Cuomo, 166 F.3d 473, 482 (2d Cir. 1999) (internal quotation marks and citations omitted) (omissions in La Raza).

Here, the documents are predecisional because they were used to assist DOS officers in reaching final decisions on visa applications, policy questions, and litigation cases, and deliberative because they discuss proposed next steps or potential outcomes of those applications, policies, or litigations. See, e.g., Vaughn entry 8 ("The withheld information contains a discussion between Department officials

regarding a specific visa applicant, represented by John Assadi and/or Assadi & Milstein LLP, and the next steps the Department is considering before taking action on this particular visa application . . . the withheld portion is also exempt from release under FOIA exemption b5 because it is pre-decisional and deliberative with respect to the adoption of a final decision on how this visa application will be adjudicated."); Vaughn entry 29 ("This document consists of an e-mail chain among NVC staff. The discussion concerns the creation of case reports utilizing particular specified query criteria and whether such reports are different from other previously created reports, and whether they can be run regularly or must be separately requested. The Department withheld messages under FOIA exemption b5 pursuant to the deliberative process privilege because they contain internal discussions regarding whether and how to create particular case reports, and they are pre-decisional and deliberative with respect to the adoption of a final decision on these issues."); Vaughn entry 30 ("These documents consist of e-mail messages among NVC staff, DOS attorneys, and Department of Justice ("DOJ") Assistant U.S. Attorneys ("AUSAs") from the Southern District of New York ("SDNY") with the same subject line. These e-mail messages contain a discussion of the lawsuit, Arabnia et al. v. Dep't of State, 10 Civ. 3737 (KMW) (SDNY), and about matters raised in a related contemplated lawsuit, including a

discussion of how the U.S. Government (USG) should proceed in these matters . . . The Department also withheld these documents under FOIA exemption b5 pursuant to the deliberative process privilege because they contain discussions between and among DOS officials and their attorneys regarding proposed next steps in the case, and they are pre-decisional with respect to the final action to be taken with respect [to] certain issues in this lawsuit.").

DOS's Vaughn entries are also reasonably detailed. They describe the author, recipient, date, type and content of each document withheld in whole or in part, and explain why the document falls within an applicable exemption or exemptions. For example, Vaughn entry 10 describes the withheld document as an intra-agency e-mail chain between September 15 and 16, 2011, and states:

This document is an e-mail chain that includes communications between Consular Officials and DOS counsel seeking and/or receiving legal advice regarding the standards and processes pertaining to the adjudication of visas. The withheld information contains a discussion between Department officials regarding several visa applicants, represented by John Assadi and/or Assadi & Milstein LLP, and the next steps the Department is considering before taking action on these particular visa applications. The discussion itself pertains directly to the issuance or refusal of a visa to enter the United States and, therefore, is withheld under FOIA exemption b3. Furthermore, material has also been withheld under FOIA exemption b5 pursuant to the attorney-client privilege and the attorney work product doctrine to protect communications between attorneys and their clients for the purpose of seeking and/or providing legal advice, as well

as work product prepared by attorneys in connection with ongoing and/or anticipated litigation involving E-11 visa petitions and Mr. Assadi. These communications were intended to be kept confidential and that confidentiality has been maintained. The document also contains personally identifiable information about the visa applicants, release of which would constitute a clearly unwarranted invasion of privacy, and, therefore is withheld under FOIA exemption b6. This document has been subject to a thorough review for the purpose of releasing any non-exempt information; however, it contains no additional information that may be reasonably segregated and released.

Assadi is correct that the Walter Declaration does not explain how Exemption 5 applies to each withheld document. But see NAACP Legal Defense and Educ. Fund, 2007 WL 4233008, at \*11 (“[A]lthough OIG’s Vaughn index and accompanying declaration are perhaps not as full as might be ideal, they nevertheless provides [sic] a sufficient basis for making a ‘reasoned judgment’ that the documents fall within the scope of the deliberative process privilege.”) (citations omitted); Halpern v. F.B.I., 181 F.3d 279, 291 (2d Cir. 1999) (“[A] number of courts, including our own, have eschewed rigid adherence to any particular indexing format under the Vaughn standard, opting instead for a functional approach.”). Under that approach, DOS’s Vaughn indices and the Gorsky Declaration provide an adequate basis to conclude that DOS’s process assured that the withheld documents are exempt from disclosure.



#### **D. Segregability**

Assadi argues that the Walter Declaration and Vaughn indices do not establish that DOS has disclosed all segregable non-exempt material.

FOIA requires that "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b). "The agency is entitled to a presumption that it complied with its obligation to disclose reasonably segregable material." Conti v. U.S. Dep't of Homeland Sec., 12 Civ. 5827, 2014 WL 1274517, at \*25 (S.D.N.Y. Mar. 24, 2014). "The fact that there may be some nonexempt matter in documents which are predominantly exempt does not require the district court to undertake the burdensome task of analyzing approximately 300 pages of documents, line-by-line." Doherty v. U.S. Dep't of Justice, 775 F.2d 49, 53 (2d Cir. 1985) (citations omitted).

Walter declares, "After conducting a line-by-line review, the Department determined that no further segregation can be made without disclosing exempt information." Walter Decl. ¶ 61. The Vaughn entries also state that DOS conducted segregability analysis for each document. See Vaughn entries 1-84.

DOS has withheld 81 of the 83 disputed documents pursuant to Exemption 3.<sup>3</sup> Exemption 3 provides for withholding if the matter is "specifically exempted from disclosure" by a statute that "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b)(3)(A). Section 1202(f) requires that records pertaining to the issuance of visas remain confidential, and DOS has established that the documents withheld under Exemption 3 are restricted from disclosure under § 1202(f).

Assadi contends that DOS's redaction of Vaughn entry 35, a cable titled "Abuse Suspected in Ankara IV E-1 Cases" which alerted DOS's Consular Affairs Offices about fraud concerns in connection with specific visa applications, shows DOS's faulty segregability analysis. P. Opp. at 14. Assadi argues, "The fourth paragraph of the unredacted cable does not fall under the claimed FOIA exemption 3, and is easily segregable from the remained of the document, even assuming arguendo that the rest of the document is covered by any claimed FOIA exemption." P. Opp. at 14 (emphasis in original). However, examination of the document shows that the short (final) fourth paragraph of Entry 35 is a conclusion, recommending action based on the specific

---

<sup>3</sup> Although the Vaughn indices contain eighty-four entries, because Vaughn entry 62 was withheld in error, only eighty-three documents are disputed.

visa submissions set forth in the cable from which the recommendation draws its meaning; it is not separable from its foundation in the document.

The only disputed documents not withheld under Exemption 3 - Vaughn entries 36 and 47 - were both withheld in full under Exemption 5's deliberative process privilege. Entry 36 describes e-mail chains among NVC staff discussing "reconciling the number of cases in the NVC's Fraud Prevention Unit ("FPU") with the number produced by unit reports," while entry 47 describes an e-mail chain among NVC staff discussing "whether and how to include an item in the NVC's periodic Fraud Digest to inform posts of concern about certain visa cases." No reasonably segregable material appears to be in those two documents.

DOS has shown that it is entitled to the presumption that all reasonably segregable non-exempt material has been disclosed.

#### **E. In Camera Review**

Finally, Assadi asks the Court to conduct an in camera review of the disputed documents, contending that the number of documents to be disputed is relatively small and repeating his arguments that the Walter Declaration did not adequately describe the withheld documents' contents or the bases for the

claimed exemptions and DOS's failure to search its legal offices demonstrates bad faith. P. Opp. at 7-8.

"Only if the government's affidavits make it effectively impossible for the court to conduct de novo review of the applicability of FOIA exemptions is in camera review necessary." Associated Press v. U.S. Dep't of Justice, 549 F.3d 62, 67 (2d Cir. 2008) (citations omitted). "Ultimately, the decision is entrusted to the district court's discretion." Id. (citation omitted).

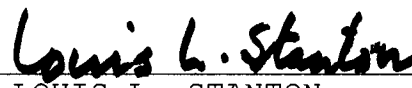
As previously discussed, the Walter Declaration and Vaughn indices submitted by DOS are sufficiently specific and DOS's request for clarification of Assadi's FOIA request does not indicate bad faith. Because Assadi has not effectively challenged DOS's assertions by contrary evidence or a showing of agency bad faith, in camera review is unnecessary.

#### **CONCLUSION**

DOS has shown that its search was adequate, that the withheld documents fall within applicable FOIA exemptions, and that it has provided all information that can be reasonably segregated from the exempt information, and the motion for partial summary judgment (Dkt. No. 11) is granted.

So ordered.

Dated: New York, New York  
September 19, 2014

A handwritten signature in black ink, reading "Louis L. Stanton". The signature is written in a cursive style with a horizontal line underneath it.

LOUIS L. STANTON

U.S.D.J.